

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

THOMAS WAYNE FLORENCE, #654322 §

VS. § CIVIL ACTION NO. 6:05cv307

A. DEEL, ET AL. §

ORDER OF DISMISSAL

Plaintiff Thomas Wayne Florence, a prisoner confined in the Texas prison system, filed this civil rights lawsuit about a prison disciplinary proceeding. The complaint was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the complaint should be dismissed. The Plaintiff has filed objections.

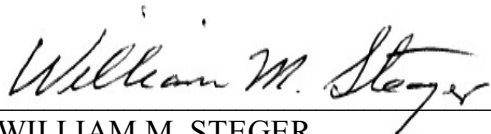
The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections by the Plaintiff are without merit.

The Plaintiff complained about a disciplinary case where the punishment consisted of nothing more than commissary and cell restrictions, along with a reduction in classification. The Report noted that the Fifth Circuit has held that the type of punishment the Plaintiff received did not involve a protected liberty interest in order to trigger the protection of the Constitution. *Malchi v. Thaler*, 211 F.3d 953 (5th Cir. 2000). The Plaintiff argued in his objections that the *Malchi* decision was

erroneous, but this Court is obligated to follow the Fifth Circuit's decision. The Plaintiff's objections lack merit. Thus the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the cause of action is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). All motions by either party not previously ruled on are hereby denied.

SIGNED this 15th day of February, 2006.


WILLIAM M. STEGER
UNITED STATES DISTRICT JUDGE